

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
)  
Annual Assessment of the Status of )  
Competition in the Market for the ) MB Docket No. 06-189  
Delivery of Video Programming ) )  
)  
\_\_\_\_\_)

**COMMENTS OF WHEATON, ILLINOIS**

These Comments are filed by the City of Wheaton, Illinois in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"), the National League of Cities ("NLC"), the National Association of Counties ("NACo"), the United States Conference of Mayors ("USCM"), and other national municipal organizations. Like the national municipal organizations, Wheaton believes that local governments want and encourage competition in the video programming marketplace. The local franchising process works and helps to ensure that all residents share in the benefits that increased competition brings to a community.

Our community previously filed Comments in the franchising proceeding, MB Docket No. 05-311, the Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992. Because this Notice of Inquiry raises many of the same issues that were addressed by our earlier Comments, we are attaching a copy of those Comments for inclusion in this proceeding.

**I. Wireline Video Competition in Our Community**

Wheaton is a city of 56,000. We currently receive video service from Comcast, Dish Network and Direct TV. Approximately half of the households in our community receive service from more than one provider. Only Comcast is a wireline provider.

Since the filing of our earlier comments, our community continues to be served by only one wireline cable provider. Though we would welcome competition; we have not been approached by other operators expressing an

interest in providing competitive video programming services to our residents.

## **II. Effects of Video Competition in Our Community**

While Wheaton does not have competition, neighboring communities do benefit from competition through lower rates and the garnering of system enhancements such as INETs.

## **III. Impacts on Local Programming**

Comments received as the franchising authority draws strong evidence that because of local programming, residents are apt to subscribe to cable or retain cable service, even when presented with service issues or the rate differences of DBS.

## **IV. Regulatory, Environmental, and Financial Effects on Competition**

We would value video competition and want new providers to come into our community so that all of our residents may benefit from the advances being made in the telecommunications arena. The local cable franchising process functions well in Wheaton. It ensures that local cable operators are allowed access to the rights-of-way in a fair and evenhanded manner, that other users of the rights-of-way are not unduly inconvenienced, and that uses of the rights-of-way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

**Conclusion**

The local cable franchising process functions well in Wheaton and it ensures that our community's specific needs are met and that local customers are protected. We applaud efforts to increase competition in the video programming marketplace. But the local cable franchising process should not be used as an excuse for the failure of new cable service providers to enter into the marketplace.

Respectfully submitted,

City of Wheaton

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Attachment: City of Wheaton comments filed; MB Docket No. 05-311

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In the Matter of )  
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Protection and Competition Act of 1992 )

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**COMMENTS OF THE CITY OF WHEATON, ILLINOIS**

These Comments are filed by THE City of Wheaton in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Wheaton believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

In our community a cable "franchise" is termed a Cable Television Franchise. The Federal Cable Act refers to this as a "franchise" so we will use that term in these comments. Also, many communities have a cable ordinance which operates in conjunction with the franchise agreement, the terms of which are often negotiated with the cable company in conjunction with the franchise agreement. These documents collectively referred to as the "franchise" below.

**Cable Franchising in Our Community**

**Community Information**

Wheaton is a city with a population of 56,000. Our franchised cable provider is Comcast. Our community has negotiated cable franchises since 1984.

**Our Current Franchise**

Our current franchise originated on July 2, 1984 and expired on July 2, 1999. At that time, the incumbent provider requested a 2-year extension (until July of 2001) due to the sale of the system to AT&T Broadband. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. At this time we are currently negotiating a franchise renewal with the incumbent provider, Comcast.

Our franchise requires the cable operator to pay a franchise fee to the city in the amount of 5 % of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. We currently have 1 channels (or capacity) devoted to public access; 2 channels (or capacity) devoted to educational access; and 2 channels (or capacity) devoted to government access. *Franchise Language:* As part of the Basic Services on the Subscriber System, the cable operator shall initially supply, without charge: (i) a minimum of five (5) activated Video Channels, which the City may elect to use, in whole or in part, for Video, Audio, or Data Services, and (ii) access to the upstream capacity specified in Appendix A to this Agreement. Said Channels shall be the Access Channels and shall be dedicated to public, educational, and other institutional use. However, the public, educational, and other institutional use of the Subscriber System pursuant to this Section 4.3 shall initially be made on one (1) Channel to be included in Universal Service. Said Channel shall be the same Channel on which noncommercial and other Services shall be initially distributed by the City pursuant to Section 4.2.01 of this Agreement. The City Manager may, at any time and without prior consultation with Centel, direct that any one (1) or more of the five (5) Access Channels thus reserved be used for public, educational, municipal, or other institutional use pursuant to this Section 4.3. All Access Channels supplied pursuant to this Section 4.3 shall be distributed at Dial Locations to be selected by Centel, except that the City Manager may require that one (1) or more of the Access Channels be located within Universal Service.

The Access Channels shall be placed under the jurisdiction of a commission, to be established by the City Council. Said Access Channels shall be used for the purposes of distributing noncommercial services by public, educational, charitable, and other noncommercial organizations, and for any other purpose agreed to between Centel and WCCC.

Our franchise requires that our PEG channels be supported in the following ways by the cable operator: Initially there was extensive support and grants given to PEG access facilities and operations. Since that time, and during the renewal process, the city has agreed to relieve those requirements and leave it open for discussion as negotiations continue. Comcast has provided ongoing facilities and technical support in the form of upgrading the upstream path to the headend over fiber along with modulators, converters and cabling. They provide services and equipment to the City (several times per year) allowing a live signal to be sent from different locations. Comcast also provides a staff person to tape our City Council meetings twice per month and complimentary cable modem service to one municipal location.

Our franchise contains the following institutional network ("I-Net") requirements:

With the incumbent provider the city had an I-Net which it used quite extensively. Over time the network was dropped and the city established its own network. During the renewal discussions capacity for city use on the Comcast upgrade is being discussed. The operator still provides an I-Net drop at a few downtown locations to supply a live video signal upstream.

Our franchise contains the following requirements regarding emergency alerts: The system will permit designated public officials to override by remote control all programming with Audio, Video, or character-generated emergency messages. Notification is provided through our police department, who contacts our county emergency management office to have emergency notices posted. The county can also activate weather related advisories, as can the national weather service. The emergency alert requirements provide an important, and in some cases, the only avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise. As a requirement of the transfer of control from AT&T to Comcast, we require the cable operator to meet the minimum standards set forth by the FCC. We have not enforced that to date as most related issues have been primarily addressed with local contacts. Other customer service provisions in the franchise include: complaint procedures; resolution of customer complaints; customer notification of discontinuation of service; customer notification of privacy policies; customer notification of fees, charges or deposits and any changes to them.

Our original franchise contains the following reasonable build schedule for the cable operator: within 6 months – 10% of the occupied households, within

12 months – 50% of the occupied households and within 18 months – 100% of the occupied households.

Our franchise requires that the cable operator currently provide service to the following areas of our community: A system to pass and be capable of serving all residences and institutions existing on the effective date of the agreement. A provision was added to limit build out of the system where there are 25 or less potential subscribers per linear mile.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements: The franchise contains the provision: Throughout the term of this Agreement, the operator shall: (i) maintain and upgrade the services distributed over the System and the technical performance of the System so as to keep pace with developments in the State-of-the-Art of Broadband Communications Facility technology, and (ii) either on its own initiative or at the request of the City Manager, participate in or undertake experiments, tests, and other activities to enhance and advance the State-of-the-Art of Broadband Communications Facility technology. The system was in fact rebuilt over 3 years. The upgrade started in 1999 with Jones, then AT&T Broadband, at which time it was put on hold for 12-18 months, whereas it was reinstated and completed in 2003. Residents can now receive cable modem service.

Our franchise does not contain a "most-favored-nations" provision. Illinois state law asserts through the Illinois Overbuild Act: "... no such additional ... franchise shall be granted under terms or conditions more favorable or less burdensome to the applicant than those required under the existing cable television franchise...." 65 ILCS § 5/11- 42-11(e).

Our franchise contains the following insurance and bonding requirements: The policy or policies furnished shall be in the minimum combined amount of Ten Million Dollars (\$10,000,000.00) for bodily injury and property damage. A security fund (unconditional letter of credit) of \$250,000 was also established to meet obligations of the franchise.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. The franchise requires the cable provider to obtain all necessary licenses and permits from the necessary parties as well before it may access the public rights of way. As with other entities operating in the PROW, providers enter into an easement agreement and the City does not charge for these permits.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement: Through the franchise the City has the right to: inspect and audit company records that pertain to financial matters; review required technical inspections; retain technical consultants on a periodic basis for the purpose of overseeing, testing, and inspecting the construction, operation, and maintenance of the system, and to ensure compliance with the provisions of the agreement. The City has the right to periodically inspect the construction, operation, and maintenance of the system. The agreement also addresses liquidated damages such as failure to meet construction deadlines or standards, invasion of privacy, failure to provide service and failure to provide records or documents.

### **The Franchising Process**

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived (whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Our current franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows: The operator shall “support, without any challenge, the validity of said provisions hereof and amendments or other modifications hereto in connection with any proceedings regarding or affecting this Agreement before any federal or State agency. Modifications are addressed as follows: “no provision of this Agreement, nor any Appendix to this Agreement, shall be amended or otherwise modified, in whole or in part, except by an agreement, in writing, executed by the City and Centel, which agreement shall be authorized on behalf of the City through the adoption of an appropriate resolution or order by the City Council”.

While a franchise is negotiated by the local government as a contract, the process provides the cable operator additional due process rights, and consequent additional obligations on the local government. For instance: Public hearings are required for transfer of control of the company.

### **Competitive Cable Systems**



Our community was approached once in 1994-95, but the provider chose not to enter into any formal discussions. Informal discussions took place but the applicant (Ameritech) decided it did not want to meet the City's requirement of obligations provided by the incumbent provider.

### **Conclusions**

The local cable franchising process functions well in City of Wheaton. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Wheaton therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

City of Wheaton

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